

Private Police and Crime

By James E. Hanley Response Essays October 12, 2015

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Private governance remains poorly understood by political and economic theorists. Political scientists understand that politics as an activity is not limited to the domain of statecraft, but they tend to view the state as the primary, if not the sole, legitimate source of governance. Economists tend to look diligently for market failures—then negligently just assume government is the necessary source of solutions. Consequently we do not really know the limits of private governance, or if it even has limits.

Arguments for the state tend to be arguments from incredulity. Just as creationists respond to evolutionary theory with “God of the gaps” arguments, social scientists respond to private governance theory with “government of the gaps” arguments. The problem with such arguments is that they are not based on evidence, but on a lack of evidence, and their weakness is revealed each time a gap gets filled in. For example, tragedies of the commons are supposed to be inevitable without government rulemaking and enforcement, but Elinor Ostrom and a host of co-researchers have demonstrated that collective governance systems can manage common pool resources sustainably for centuries.^[1] Contract enforcement is also supposed to be impossible without government, but in *Private Governance* Edward Stringham shows how private clubs can promote assurance in economic exchanges.

In addition to the empirical weakness of “government of the gaps” arguments, social scientists should look for private governance solutions because of the problem of violence. The state is characterized both by its capacity for, and its claim to the legitimate use of, violence. We implicitly recognize that the violence of the state is a problem when we promote constitutional democracy constrained by the rule of law, the least violent form of government. But private governance, relying more on voluntary agreement and having a far more limited claim to be able to use violence legitimately, further minimizes the role of violence in governance. Although the western political tradition has taught us to view government as a human achievement, we can also view it as evidence of failure to resolve problems of collective governance without resorting to the threat of violence.

Yet these criticisms do not prove that private governance is sufficient in all cases or that formal government is wholly unnecessary. They simply mean that we need to look more seriously at the potential for private governance. There may in fact be gaps that can’t be filled by private governance, but we need to look at those perceived gaps as hypotheses, rather than as demonstrated proofs. And one gap that has not yet been filled is the one containing that class of activities we normally think of as criminal: personal violence and property crimes—cases where we cannot reasonably apply the concept of *caveat emptor*. In other words, it is not yet clear that private governance is sufficient to solve the problems that Hobbes and Locke used to justify government.

We know private policing has value; we just do not know if it is sufficient on its own. The value is demonstrated by the willingness of consumers to voluntarily pay for private police services above and beyond the public policing services for which they are already paying. But crime lacks some of the factors that characterize economic exchange. These include the discipline of continuous dealing, famously analyzed in studies of the iterated prisoner’s dilemma; reputational effects that allow us to avoid dealing with those who’ve cheated others; and what we might call “clubbiness,” the ability to sort ourselves into mutually trustworthy communities and expel those who violate that trust. While these factors might characterize criminal organizations, they do not characterize the relationship between criminal and victim.

Gated communities demonstrate both the value and the possible limits of private policing. The limits on access and the presence of private security clearly can play an important role in reducing crime, and as clubs these communities could enact rules expelling members who commit crimes. But whereas a stock

exchange club can exclude outsiders entirely or make them visible enough that members know they are trading at their own risk with nonmembers, criminals from outside the gated community's club have surreptitiously circumvented efforts to exclude them and have tried to remain invisible, while harmed club members normally haven't chosen to take the risk of voluntarily interacting with the criminals. The trader who is cheated by someone he voluntarily traded with can punish that person by refusing to trade with her again, by informing the stock exchange's authorities, and by publicizing her reputation for ill-dealing, but the victim of an anonymous burglary lacks those remedies.

Once the crime has been committed, private police may not be able to provide the remedies public police forces have available. Certainly private investigators exist and are often effective, so criminals might not succeed in going undetected, or at least not with any greater frequency than they do with public policing. But it's uncertain what they could do once the criminal is identified. Stringham notes that until recent decades private police in San Francisco had powers of arrest, but it appears that this power was just on loan from the government. Without the support of government's claim to the legitimate use of violence, would a private arresting power have any legitimacy, at least when they are not on the property they are paid to protect? Without the authority of government, is arrest merely assault? Is a search of someone's property merely a home invasion?

If we do grant that a private police force can exert the de facto police powers of the state, we also need to address its potential to become a criminal enterprise itself. Stringham asserts that private trials and executions in 19th century San Francisco followed the standards of due process, but for evidence relies on contemporary accounts that likely were self-justificatory. We should view those irregular tribunals with the same skepticism we should bring to our study of government. Beyond this potential for vigilante justice (unfortunately not impossible with public policing and judicial procedures, either), private policing could morph into a protection racket, a mafia in practice if not in name. A community that collectively contracted for private police might even prefer such a service if it kept out rival police seeking to arrest community members for crimes committed elsewhere. Ironically, individual choices to exit a community guarded by Mafiosi would have the effect of diminishing opposition and enhancing the power of the criminal enterprise over the remaining community members.[2] The violence of such stationary bandits is not always distinct from the violence of the state, and may even be the state's origin.[3]

The existence of private policing demonstrates that public policing is not a sufficient response to the problem of crime, but does not establish that private policing by itself is sufficient, either. Further, private policing may be a disequilibrium that devolves into government over the long run. Together these suggest that the problem of crime may mark the limits of private governance.

[1] Ostrom, Elinor. 1990. *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge: Cambridge University Press.

[2] Gambetta, Diego. 2000. "Mafia: The Price of Distrust," in *Trust: Making and Breaking Cooperative Relations*, ed. Diego Gambetta.

[3] Olson, Mancur. 1993. "Dictatorship, Democracy, and Development." *American Political Science Review* 87(3): 567-576.